

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

JAY BLOYER,  Plaintiff,  v.  POET BIOREFINING – BIG STONE, LLC,  Defendant.	4:21-cv- <u>4189</u>  COMPLAINT AND DEMAND FOR JURY TRIAL
---	--

Plaintiff Jay Bloyer, through his counsel, for his Complaint against Defendant POET Biorefining – Big Stone, LLC, states:

**Parties**

1. Plaintiff Jay Bloyer (“Bloyer”) is, and at all relevant times was, a resident of Merrill, Iowa.
2. Upon information and belief, Defendant POET Biorefining – Big Stone, LLC (“Defendant”) is a South Dakota limited liability company with its principal place of business in Big Stone, South Dakota, and all of its members are residents of the State of South Dakota.

**Jurisdiction and Venue**

3. This Court has jurisdiction under 28 U.S.C. § 1332, diversity of citizenship.
4. The damages at issue exceed \$75,000.
5. This Court is the proper venue under 28 U.S.C. § 1391(b)(1) and (2).

**Background and Facts**

6. Defendant owns a biorefining facility located at 48416 144th Street, Big Stone, South Dakota (“the Facility”).

4:21-cv-\_\_\_\_\_  
Complaint and Demand for Jury Trial

7. There are several large, commercial boilers with metal doors located at the Facility.

8. Defendant retained the services of Rasmussen Mechanical Services to open the doors of the boilers at the Facility so that the boilers could be inspected by Defendant's insurer.

9. On October 22, 2019, Bloyer, as an employee of Rasmussen Mechanical Services, came to the Facility to open the boiler doors.

10. While Bloyer was opening the boiler door, the metal door fell off of the boiler and onto Bloyer.

11. The boiler fell because the bolt/pin holding the door was broken.

12. The broken bolt/pin was a replacement bolt/pin for a previous bolt/pin.

13. Upon information and belief, either this boiler door, or another boiler door at the Facility, had fallen before the boiler door fell on October 22, 2019.

14. As a proximate cause and cause in fact of the boiler door falling on him, Bloyer suffered temporary and permanent bodily injury, emotional injury, disability, scarring, pain and suffering, diminished quality of life, loss of enjoyment of life, medical bills, lost wages, and other damages in amounts to be determined at trial.

**Count 1**  
***Negligence***

15. Bloyer restates the preceding paragraphs of this Complaint and incorporates them by reference.

16. Defendant owed Bloyer a duty to exercise reasonable or ordinary care for his safety.

17. Defendant breached that duty in the following individual and collective manner:

- a. Defendant failed to properly select, install, repair, inspect, and manage the boiler door's hinge and bolt/pin;

4:21-cv-  
Complaint and Demand for Jury Trial

- b. Defendant failed to remedy or fix the boiler door, with its hinges and bolt/pin;
- c. Defendant failed to warn Bloyer that the boiler door, with its hinges and bolt/pin, was a dangerous condition;
- d. Defendant failed to exercise due care in the maintenance of the boiler door, including its hinge and bolt/pin;
- e. Defendant failed to keep the boiler door, including its hinge and bolt/pin, in a reasonably safe condition; and/or
- f. Defendant chose not to use safety chains, or other secondary safety devices, even though it knew that a boiler door had previously fallen.

**Requested Relief**

Bloyer requests the following relief:


- 1. Enter judgment in Bloyer's favor.
- 2. Award Bloyer compensatory damages, plus pre-judgment interest thereon.
- 3. Award Bloyer's attorneys' fees and other costs as allowed by law.
- 4. For such other further relief as the Court deems appropriate.

**Demand for Jury Trial**

Bloyer respectfully demands a trial by jury on all issues so triable.

Dated: November 10, 2021.

FULLER, WILLIAMSON, NELSEN  
& PREHEIM, LLP

  
\_\_\_\_\_  
Derek A. Nelsen  
Eric T. Preheim  
7521 South Louise Avenue  
Sioux Falls, SD 57108  
(605) 333-0003  
dnelsen@fullerandwilliamson.com  
epreheim@fullerandwilliamson.com  
*Attorneys for Plaintiff*

JS 44 (Rev. 12/12)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

JAY BLOYER

**DEFENDANTS**

POET BIOREFINING - BIG STONE, LLC

(b) County of Residence of First Listed Plaintiff State of Iowa

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Grant County, SD

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Derek A. Nelsen and Eric T. Preheim

Fuller &amp; Williamson, LLP, 7521 S. Louise Ave., Sioux Falls, SD 57108

(605) 333-0003

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)☐ 1 U.S. Government Plaintiff☐ 3 Federal Question (U.S. Government Not a Party)☐ 2 U.S. Government Defendant☒ 4 Diversity (Indicate Citizenship of Parties in Item III)**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4
Citizen of Another State	<input checked="" type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RS1 (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

☒ 1 Original Proceeding    ☐ 2 Removed from State Court    ☐ 3 Remanded from Appellate Court    ☐ 4 Reinstated or Reopened    ☐ 5 Transferred from Another District (specify)    ☐ 6 Multidistrict Litigation

**VI. CAUSE OF ACTION**Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 U.S.C. 1332

Brief description of cause:

Plaintiff alleges injuries and damages following an incident at Defendant's facility on 10/22/2019.**VII. REQUESTED IN COMPLAINT:**☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.**DEMAND \$**

CHECK YES only if demanded in complaint:

**JURY DEMAND:** ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

11/10/2021

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_